

13276-A
RECORDATION NO. _____ Filed 1425

OCT 13 1981 10 30 AM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
Washington, D.C.

13276
RECORDATION NO. _____ Filed 1425

OCT 13 1981 10 30 AM

INTERSTATE COMMERCE COMMISSION

8 50
③

New No. and

1-286A047

No. _____
Date _____
Fee \$ 50.00

ICC Washington, D. C.

OCT 13 10 23 AM '81

- A

Gentlemen:

Enclosed for recordation under the provisions of 49 USC Section 11303(a) are the original and ten counterparts of a North American Car Corporation Car Leasing Agreement dated as of September 1, 1981 with Rider No. 1 attached thereto.

The general description of the railroad equipment covered by the enclosed document is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Lessor: North American Car Corporation
33 West Monroe
Chicago, Illinois 60603

Lessee: FMC Corporation
200 Randolph Drive
Chicago, Illinois 60601

The undersigned is the Lessor mentioned in the enclosed document and has knowledge of the matters set forth therein.

Please return the original and eight counterparts of the Equipment Lease to Gary Green, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

NORTH AMERICAN
CAR CORPORATION

By [Signature]
LESSOR AS AFORESAID

Enclosures

CT Kennedy
Chapman and Cutler

DESCRIPTION OF EQUIPMENT

| <u>Number of Items</u> | <u>Description</u> | <u>Identifying Mark and Numbers (Both Inclusive)</u> |
|----------------------------|---|--|
| 225 | Covered Hopper Cars Manufactured by FMC Corporation | NAHX 900000 through NAHX 900224, both inclusive |

13276

RECORDATION NO. Filed 1425

NORTH AMERICAN CAR CORPORATION
CAR LEASING AGREEMENT OCT 3 1981 - 10 30 AM
INTERSTATE COMMERCE COMMISSION

NO. 2865-1

This Agreement, dated September 1, 1981, by and between
 NORTH AMERICAN CAR CORPORATION, a Delaware corporation (hereinafter called "North American"),
 and FMC CORPORATION, a Delaware corporation, with
 its principal place of business at 200 E. Randolph Dr., Chicago, IL 60601 (hereinafter called "Lessee"),

WITNESSETH:

§ 1. North American agrees to furnish and lease to Lessee, and Lessee agrees to accept and use upon the terms and conditions herein set forth, the cars covered by the riders attached hereto and such additional riders as may be added hereto from time to time by agreement of the parties, and any and all other cars delivered to and accepted by Lessee. Each such rider shall set forth the number of cars, the rental rate, term of use, car numbers, and other pertinent information that may be desired by both parties. All cars leased pursuant to such riders, or otherwise delivered to and accepted by Lessee, are subject to the terms of this Agreement.

§ 2. North American agrees to deliver the cars to Lessee at a point or points designated by Lessee. North American's obligation as to such delivery shall be subject to all delays resulting from causes beyond its control. Lessee agrees to use the cars exclusively in its own service, except as hereinafter provided, and none of the cars shall be shipped beyond the boundaries of the United States ~~except with the prior written consent of North American. Lessee agrees that if any of the cars are used outside of Continental United States, Lessee shall reimburse North American for any customs duties, taxes, investment~~ tax credit reductions or other expenses resulting from such use.

§ 3. Lessee agrees to pay the rental charges with respect to each of the cars ~~from the date of delivery thereof and until such cars are returned to and accepted by North American. Such rental charges shall be paid to North American at its principal office, 33 West Monroe Street, Chicago, Illinois 60603. In advance on the first day of each month, beginning however any period which is less than a full month.~~

§ 4. Each of the cars shall be subject to Lessee's inspection upon delivery to Lessee. Failure to report any defect in the car within a reasonable time after delivery of the car or the loading of each such car by Lessee or at its direction shall constitute acceptance thereof by Lessee, and shall be conclusive evidence of the fit and suitable condition thereof for the purpose of transporting the commodities then and thereafter loaded therein or thereon.

§ 5. North American agrees to keep records pertaining to the movement of the cars, and Lessee agrees to promptly furnish North American with complete reports of the car movements, including dates received, loaded and shipped, commodity, destination, and full junction routing, and all information which Lessee may receive from railroad companies or other sources which may be of use to North American. North American shall collect the mileage earned by the cars, and, subject to all rules of the tariffs of the railroads, North American shall pay to Lessee ~~such mileage as~~ such mileage as and when received from the railroads, but in no event shall the aggregate amount of mileage paid exceed the aggregate monthly rentals for the term of this Agreement. Mileage earnings for all cars covered by this Agreement shall be carried in a consolidated account, together with mileage earnings under all other Car Leasing Agreements between North American and Lessee.

§ 6. Lessee agrees to reimburse North American for any payment North American may be required to make to any railroad, due to mileage equalization where applicable, resulting from excess empty mileage incurred by the cars on such railroad. For the purpose of this section the railroad mileage and junction reports shall be prima facie evidence of the facts reported therein. In addition, if North American is required to make any payments to a railroad resulting from the empty movement of any of the cars while they are in Lessee's service, Lessee agrees to reimburse North American for such payments.

§ 7. Lessee shall promptly notify North American upon receipt by Lessee of knowledge of any damage to any of the cars. North American agrees to pay for the maintenance and repair of the cars, except as hereinafter provided. Lessee shall not repair, or authorize the repair of, any of the cars without North American's prior written consent, except that running repairs (as specified in the Association of American Railroads rules for Interchange) may be performed without prior written consent. The amount North American will pay for such running repairs shall not be in excess of the basis, in effect at the time the repair is made, provided by the Association of American Railroads. ~~If any car becomes unfit for service and shall be held in a car shop for repairs and shall remain there for a period in excess of five days, the monthly rental with respect to such car shall be due from and after such period of five days and such car is released from the shop or used and then such car shall be placed in the service of Lessee by North American in substitution for such car and Lessee shall be entitled to the rental credit will be issued for cars in a shop for repairs which are Lessee's responsibility.~~

~~§ 8. In the event any car is totally damaged or destroyed, the rental with respect to such car shall terminate upon receipt by North American of notification thereof, and in the event any car is reported to be bad ordered and North American elects to permanently remove such car from Lessee's service rather than have such car taken to a car shop for repairs, the rental with respect to such car shall terminate upon receipt by North American of notification that such car was bad ordered. North American shall have the right, but shall not be obligated, to substitute for any such car another car of the same type and capacity and the rental in respect to such substituted car shall commence upon delivery of such substituted car to Lessee.~~

§ 9. In the event that any of the cars, or the fittings, appliances or appurtenances thereto, shall be damaged, ordinary wear and tear excepted, or destroyed either as a result of the acts of any of Lessee's employees, agents or customers or from any commodity or other material loaded therein or thereon, Lessee agrees to assume financial responsibility for such damage or destruction.

§ 10. North American shall not be liable for any loss of or damage to commodities, or any part thereof, loaded or shipped in or on the cars, and Lessee agrees to assume financial responsibility for, to indemnify North American against, and to save it harmless from any such loss or damage.

§ 11. Lessee, at its own expense, shall either replace or reimburse North American for the cost of replacing any appliance or removable part, if destroyed, damaged, lost, removed or stolen, unless the railroads transporting the cars have assumed full responsibility for such loss or damages, or unless such loss or damage results from the negligence or omission of North American, its agents or employees.

§ 12. The application, maintenance and removal of interior protective lining in any of the cars is to be performed by and at the expense of Lessee unless otherwise specifically provided for in the applicable rider.

§ 13. Lessee agrees to indemnify and hold North American harmless from and against any loss, liability, claim, damage or expense (including, unless Lessee assumes the defense, the reasonable cost of investigating and defending against any claim for damages) arising out of or in connection with the use of the cars during the term of this Agreement, excepting, however, any loss, liability, claim, damage or expense which accrues with respect to any of the cars (i) while such car is in a repair shop undergoing repairs; (ii) which is attributable to the negligence or omission of North American, its agents or employees; or (iii) for which a railroad or railroads have assumed full responsibility, including investigating and defending against any claim for damages.

§ 14. No lettering or marking of any kind shall be placed upon any of the cars by Lessee except with the prior written consent of North American.

§ 15. Lessee agrees not to load any of the cars in excess of the load limit stenciled thereon.

§ 16. Lessee shall be liable for any demurrage, track storage or detention charge imposed in connection with any of the cars as well as loss of or damage to any car while on any private siding or track or on any private or industrial railroad or in the custody of any carrier not subject to the Association of American Railroads Rules for Interchange.

§ 17. Lessee shall make no transfer or assignment of its interest under this Agreement in and to the cars without North American's prior written consent, except that Lessee may sublease any of the cars to its customers for single trips consistent with its normal merchandising methods; provided, however, that notwithstanding any such sublease, Lessee shall ~~remain~~ remain liable to North American under all conditions and terms of this Agreement. No right, title or interest in any of the cars shall vest in Lessee by reason of this Agreement or by reason of the delivery to or use by Lessee of the cars, except the right to use the cars in accordance with the terms of this Agreement. The consent by North American and its assignee to any sublease by Lessee will not be unreasonably withheld.

~~§ 18. If Lessee shall fail to perform any of its obligations hereunder, North American at its election may either (a) terminate this Agreement immediately and repossess the cars, or (b) withdraw the cars from the service of Lessee and deliver the same, or any thereof, to others upon such terms as North American may see fit. If North American shall elect to proceed in accordance with clause (b) above and if North American during the balance of the term of this Agreement shall fail to collect for the use of the cars a sum at least equal to all unpaid rentals hereunder to the stated date of termination hereof plus an amount equal to all expenses of withdrawing the cars from the service of Lessee and collecting the earnings thereof, Lessee agrees to pay from time to time upon demand by North American the amount of any such deficiency. It is expressly understood that North American at its option may terminate this Agreement in the event that a petition in bankruptcy or a petition for a trustee or receiver be filed by or against Lessee or in the event that Lessee shall make an assignment for creditors.~~

§ 19. Upon the termination of each rider, Lessee agrees, ~~subject to the provisions of section 8 above,~~ to return the cars to North American at a point or points ~~designated by North American,~~ in the same or as good condition as received, ordinary wear and tear excepted, free from all charges and liens which may result from any act or default of Lessee, and free from all accumulations or deposits from commodities transported in or on the cars while in the service of Lessee. If any car is not returned to North American free from such accumulations or deposits, Lessee shall reimburse North American for any expense incurred in cleaning such car.

mutually agreed between
the parties, in the

§ 20. North American agrees to assume responsibility for and to pay all property taxes levied upon the cars and to file all property tax reports relating thereto. Lessee agrees to assume responsibility for and to pay any applicable state sales, use or similar taxes resulting from the lease or use of the cars.

§ 21. It is understood that some of the cars furnished Lessee under this Agreement and North American's rights under this Agreement may at the time of delivery to Lessee or at some future time during the term of this Agreement be subject to the terms of a Mortgage, Deed of Trust, Equipment Trust, Pledge or Assignment or similar security arrangement. Lessee agrees that the cars may be stenciled or marked to set forth the ownership of any such cars in the name of a mortgagee, trustee, pledgee, assignee or security holder and that this Agreement and Lessee's rights hereunder are and shall at all times be subject and subordinated to any and all rights of any mortgagee, trustee, pledgee, assignee or security holder. As to the cars subject hereto, this Agreement and the rentals hereunder may have been assigned and may in the future be assigned to the holder, if any, of the superior lien from time to time on each car as determined with reference to the filings with the Interstate Commerce Commission; however, until notified to the contrary by any person reasonably proving to the Lessee's satisfaction that he is the assignee of this Agreement or the rentals hereunder, the Lessee is to pay all rentals to the order of North American. Lessee hereby consents to and accepts such assignments. Lessee agrees that no claim or defense which Lessee may have against North American shall be asserted or enforced against any assignee of this Agreement.

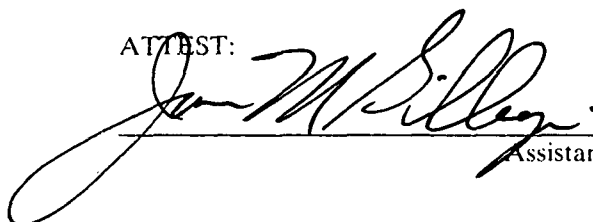
§ 22. In the event the U.S. Department of Transportation, or any other governmental agency or non-governmental organization having jurisdiction over the operation, safety or use of railroad equipment, requires that North American add, modify or in any manner adjust the cars subject to this Agreement in order to qualify them for operation in railroad interchange, Lessee agrees to pay an additional monthly charge of \$1.75 per car for each \$100 expended by North American on such car, or such other monthly charge in lieu thereof, as may be provided for Modifications in any rider hereto, in any case effective as of the date the car is released from the shop after application of such additions, modifications or adjustments (hereinafter the "Modifications"). No rental credits will be issued on cars entering the shop for any Modifications for the first thirty days. In the event North American in its sole discretion determines prior to making any Modifications that the cost thereof is not economical to expend in view of the estimated remaining useful life of such car, and North American elects to permanently remove such car from Lessee's service rather than have such car taken to a car shop for such Modifications, the rental with respect to such car shall terminate upon the date specified in writing by North American, provided that such date must be prior to the date the Modification is so required to be made.

§ 23. This Agreement shall be binding upon the parties hereto, their respective successors, assigns and legal representatives, and shall remain in full force and effect from the date hereof until the completion of the leasing arrangement shown on attached riders of the last car or cars hereunder, and all such cars are returned to North American.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in two counterparts (each of which shall be deemed an original) the day and year first above written.

NORTH AMERICAN CAR CORPORATION

ATTEST:


Assistant Secretary

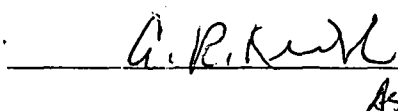
By



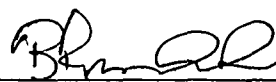
Vice President

ATTEST:

FMC Corporation


Asst Secretary

By



Vice President

State of Illinois)
) SS:
County of Cook)

On this 9th day of October, 1981, before me personally appeared Roger A. Nosark, to me personally known, who, being by me duly sworn, says that he is a Vice President of North American Car Corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Directors or other due authority, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sara Prewitt

Notary Public

My Commission expires March 26, 1983

(Notarial Seal)

State of Illinois)
) SS:
County of Cook)

On this 9th day of October, 1981, before me personally appeared B. R. van Eck, to me personally known, who, being by me duly sworn, says that he is a Vice President of FMC Corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Directors or other due authority, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sara M. Seard

Notary Public

My Commission expires My Commission Expires Dec. 16, 1984

(Notarial Seal)